United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ORIGINAL

74-1202

B P/s

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

v.

JOSEPH PINTO,

Appellant.

On Appeal From The United States District Court
For The Eastern District Of New York

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

This is an appeal from a judgment of the U. S. District Court, Eastern District of New York, rendered on February 1, 1974, convicting appellant after trial by jury of one Count of Perjury in violation of Title 18 U. S. Code, Section 1623, and sentencing him to a term of imprisonment for one (1) year pursuant to Section 3651 to serve Sixty (60) days, balance suspended, Eighteen (18) months probation.

(Judd, J., trial and sentence.)

SUMMARY OF ARGUMENT

1.) Defendant was deprived of effective representation of Counsel upon the Court's failure to grant an adjournment to adequately prepare a Defense.

2.) The Court committed prejudicial error in failing to fairly and impartially sum up the evidence and usurped the function of the jury by commenting upon the weight of the evidence and credibility of the witnesses.

3.) The prosecution deliberately deprived the Defendant of a fair trial in that it willfully withheld the identity of a witness in possession of information favorable to the defense.

4.) The Court lacked jurisdiction to try appellant in that the offense which was the subject of the Grand Jury proceeding is not an offense within the meaning of 18 U. S. C. Sec. 224.

STATEMENT OF FACTS

The appellant, Joseph Pinto, was charged by indictment with the offense of Perjury in violation of Title 18 U. S. Code, Section 1623.

The appellant was tried on the aforementioned indictment in a three (3) day trial which commenced on January 8, 1974 and was concluded by the rendition of a verdict by the jury on January 10, 1974.

THE EVIDENCE

On Thursday, January 3, 1974, appellant's counsel appeared and informed the Court that he had been just retained, and that four (4) days was not an adequate time to prepare a defense. (Tr. 4, 9). The Court refused the additional time and counsel labored that weekend on an extensive demurrer to the indictment, and moved to dismiss on the grounds of lack of jurisdiction. This motion was denied on January 8th, 1974 (Tr. 3-11).

The basis of the prosecution's case rested upon the testimony of Michael Shagan, Gladys Lee, Ralph Wilkinson, William Weglein, Nicholas Gianturco and Martin Builder. Michael Shagan, an official of the New York City Off Track Betting Corporation, testified that an I. R. S. 1099 form bearing the printed name Joseph P. Pinto had been retrieved from the records of O. T. B. That the maker of the 1099 had also written the ticket number thereon, upon it's presentation for payment, as well as the branch number, 106, paying (Tr. 30, 33). Mr. Shagan then informed us that from this ticket it could be shown, the selling branch, time of purchase, type of bet, and amount wagered (Tr. 31-32). Computer printouts from the selling branch were introduced to show that the ticket allegedly cashed by the appellant, came from a group of thirty-five $72. 00 box tickets, an approximate bet of $2, 500. 00, sold on March 8th, 1973 by O. T. B. agent Lee, at window #2 branch 64 (Tr. 41 49). Shagan further testified that but eight (8) winning Superfectas' were sold on

that date from that window, to wit; window number 2, but he could not tell us how many winners were sold from the other windows in that branch (Tr. 60, 109). He told how, if the appellant had purchased five (5) tickets they would have consecutive numbers and that the ticket cashed in the name of the appellant, was the fifth winner out of a series of seven (7) consecutive winners sold at this window (Tr. 79). All of the ticket information was contained on the computer printouts referred to above. Shagan then told us of the massively complex O. T. B. computer system employing three (3) computers with in excess of eight hundred (800) terminals and telephone wires (Tr. 82). While Mr. Shagan was aware of breakdowns and mistakes in the former computer system utilized by O. T. B., he had not reviewed the data on mistakes made in testing, or in operation, by the system now employed by O. T. B. and informed us that he was not really a computer expert (Tr. 85-87). He did admit that the new system makes mistakes (Tr. 94). Referring to the thirty-five $72.00 box tickets purchased from window #2 at branch 64, Shagan could not tell us how many people purchased these tickets. The minimum was one (1) and the maximum thirty-five (35) (Tr. 96-97). Again, no data was before the Court relative to sales made from other windows in branch 64 on the date in question (Tr. 60). Mr. Shagan admitted that if the branch manager had incorrectly noted the ticket number on the 1099 form, he could not place the appellant's alleged ticket in the fifth of seven (7) consecutive winners purchased from window #2 (Tr. 98).

Further, if such a mistake were made in copying the ticket number, from the ticket presented by the appellant onto this 1099, then the window number would also be incorrect, and the transaction contained on the printout generated from window #2, would be valueless (Tr. 109). The maker of the 1099, did not obtain the signature of the party who cashed this particular ticket as was required by O. T. B. directives. but used an old 1099 form which had no place for the payee's signature. and thus the accuracy of this document was seriously in question (Tr. 27, 98-99, 103-107). Counsel requested the identity, and preparer of, this 1099 form and was assured, prior to the trial that that party would be produced (Tr. 101).

Shagan later testified, that while the computers' make mistakes, the chances of their making compounded errors and those compounded errors going completely undetected are a trillion to one (Tr. 121).

Gladys Lee, an O. T. B. seller and cashier, who had worked at window #2 branch 64 on March 8th, was called to testify. She testified that thirty-five (35) tickets were purchased from her window, No. 2 sometime in March, the date she did not recall, and they were purchased by one individual. She testified that though she could not recall the exact date, she was sure that the appellant did not make that purchase, nor was he ever at her window (Tr. 128, 132). That eight (8) months after the purchase was made, FBI agents showed her some fifteen (15) photographs, one of the appellant, and asked her to identify the man who

made this purchase in March of 1973. She was unable to identify the purchaser, although she said a number of people looked familiar (Tr. 135). She testified, that she handled transactions with hundreds of people daily, made no notes with regard to this particular purchase, nor did she discuss the purchase or it's size with any co-workers, but never the less could recall that it was made sometime in March, by a slim middle aged man of average height and it was not the appellant (Tr. 137-140). Lee, could not tell us whether the appellant was in branch 64 during March or on that day in particular, perhaps purchasing his five (5) tickets at another window.

Mr. Wilkinson, the foreman of the Grand Jury, was called to testify as to the materiality of the testimony sought from the appellant when he appeared on each of two occasions before the Grand Jury. Wilkinson told of what was supposed irregular betting patterns and of alleged fixed races. He told of how the Grand Jury had worked backwards, from the 1099 forms, or the identity of the so called tickets cashers, to determine whether they were the true owners of those tickets, because it was believed that the true owners were potential race fixers and bribors (Tr. 145). That further, the appellant, had testified he purchased and cashed his own tickets. Mr. Wilkinson's attention was directed to a mistake on the 1099 form, prepared by the manager at branch 106, which indicated the name Joseph "P", not Joseph "F", Pinto, in a case where the data on the 1099 was critical (Tr. 148). It was, the data on the 1099

which was tied to a physical ticket, the number from which was then keyed into the computer to show that the appellant could not have purchased the tickets he testified he did.

Mr. William Weglein, next testified, he being a computer expert employed by one (1) of the computer companies used by O. T. B., to wit; American Totalizator. He told of his experience in how compounding mistakes by the computer is rare. He did admit that he had not checked the machine which generated this particular ticket, nor did he examine the magnetic tapes from which the printout in evidence was prepared (Tr. 159). He also went on to tell us that the computer could discover a mistake, even if it was malfunctioning (Tr. 160).

Nicholas Gianturco, an FBI agent, testified that the appellant had been interviewed by him and had told him, that he purchased his five (5) tickets while standing at the window uninterrupted and had one (1) winner and four (4) losers (Tr. 164). The only information that Agent Gianturco could verify on the 1099, was the appellant's address and social security number. He told us that he had the appellant's name as Joseph Francis Pinto (Tr. 166). Again, indicating that there were mistakes on this 1099. Despite it's not having been signed to insure it's accuracy, in placing some information on this 1099 an error had been made in the appellant's name.

Martin Builder, another FBI agent, testified basically, to what Agent Gianturco had testified too.

The defense called Esther Nossov, who was not the party, who prepared the 1099, but was in Court, and was the cashier at the branch where this particular ticket was cashed on March 10th. She was shown the 1099 and testified she did not prepare it and she did not recall the appellant's having come to her window, in branch 106, with a ticket to be cashed (Tr. 175). Her name, appeared on the ticket which the 1099 indicated had been cashed by the appellant (Tr. 33). She further testified that she did not know who the branch manager was who prepared this 1099.

POINT I

APPELLANT WAS DEPRIVED OF EFFECTIVE REPRESENTATION OF COUNSEL UPON THE COURT'S FAILURE TO GRANT AN ADJOURNMENT TO ADEQUATELY PREPARE A DEFENSE.

In the instant case, counsel's first appeared on January 3, 1974 at the appellant's arraignment on a superseding indictment. Counsel was informed that the matter was to be tried on January 7, 1974. Counsel pleaded for additional time to prepare motions and an adequate and effective defense in behalf of the appellant (Tr. 3-4, 9). What counsel needed was time to attempt to arrange for a computer expert, time to interview people, time for the computer expert to familiarize himself with the O. T. B. system so that he could intelligently address himself to the data which was quite extensive, and time to obtain more data on the O. T. B. system. The case itself was based on very complex material submitted by the government through their expert and such material was very scientific and complex in nature. The Court had promised to start the case and give counsel extra time, if needed. Once the trial progressed opportunities for counsel to have additional time vanished in the midst of the proceedings and the appellant was therefore unable to get the benefits of effective counsel and was prejudiced (Tr. 62).

While the speedy trial concept is one stemming from efforts to protect the accused, the principle as applied here worked to defeat the appellant of his right to effective counsel. This case rested upon whether or not on a particular occassion the computers, or combination of computers and people had erred with regard to this particular ticket number and the

allegation that it was the same ticket number which the appellant had presented for cashing. The only effective way, and the only way at all, to deal with such evidence was for counsel to obtain an expert or experts of his own, to analyze the system and contradict the government's witness. Counsel could not obtain such assistance over the course of one (1) weekend and the appellant was for all intents and purposes, denied the only opportunity he had for a defense. If counsel could have obtained such an expert, the value of that expert would have been greatly reduced because the expert would not have had the time to acquaint himself with the system and data which he would have had to have been familiar with.

The guarantee by the 14th Amendment is not satisfied by the mere presence of counsel but includes the opportunity for counsel to prepare a defense (Powell v. Alabama, 287 U.S. 45, Avery v. Alabama, 308 U.S. 444). Counsel, with adequate time, could have at least engaged a computer expert, could have obtained all the computer printouts from branch 64 and could have had his expert become familiar with the same, so that the appellant would not have been prejudiced and could have been adequately represented in this case. The effect of the action by the Court in this matter precluded counsel from adequately and effectively representing the appellant and causing the appellant to trial, and unfairly exposing the appellant to jeopardy.

POINT II

THE COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO FAIRLY AND IMPARTIALLY SUM UP THE EVIDENCE AND USURPED THE FUNCTION OF THE JURY BY COMMENTING UPON THE WEIGHT OF THE EVIDENCE AND CREDIBILITY OF THE WITNESSES.

In the instant case, the Court in it's charge to the Jury, distorted some of the testimony and added comments which were not fair to the appellant. Gladys Lee had testified that she had serviced hundreds of people on a daily basis at the numerous O. T. B. branches that she had worked in the past, and during this time when the appellant had allegedly purchased tickets from her window, and in spite of that, she did remember that the appellant did not make the purchase in question on March 8, 1973. And in addition that he had never appeared at a window that she was working at at O. T. B. (Tr. 128, 132). She testified that the individual who made this purchase was a slim middle age man of average height and that it was not the appellant (Tr. 137-140). She was able to so remember, in spite of the fact that she had made no notes nor commented to anyone else about this specific transaction. Her testimony seemed so incredible that a motion was made to strike all of it as being incredible as a matter of law. This motion was denied. In the Judge's charge, while recognizing the considerable importance of Miss Lee's testimony, the Court indicated to the Jury in essence, that they should examine the printout to believe if it was so unusual as to impress upon a persons mind to such an extent that it would make her testimony believable (Tr. 241, 242).

In addition, while Mr. Shagan had testified that the computer system does make mistakes (Tr. 94), upon questioning by counsel, he stated to the Court that the probabilities of the computer system compounding mistakes to such an extent that they are undetectable even to the computer and to the people operating the same, are in relation to a trillion to one (Tr. 121). In the Court's charge, the Court mistakenly commented upon what was said by the witness; the Court stated that what the witness had said was that the chances of a mistake or error were in relation to one in a trillion (Tr. 242) - that was not the testimony of this witness. As set forth above, he gave no estimate on the probability or recurrence of mistakes in general because he was not, by his own admission, a computer expert, but would only say that his machines did make mistakes. When asked very complex questions about the compounding of errors or mistakes to such an extent that they are undetectable to human beings or to the machines, his answer was that that probability was in relation to one in a trillion. The two questions and two answers are very far from being the same. It is respectfully submitted that this mistake in the Court's recollection of the evidence seriously worked to undermine the appellant's right to a fair trial. In point of fact, the Court by misstating this important piece of testimony was removing the question of computer error from the jury's consideration, or so tainted their recollection as to deny the appellant a jury's decision upon the facts. The Court, in addition, commented upon its opinion of the chances of different people making successive similar bets at window #2

on March 8th, 1973. The benefits of the Courts' mathematics were given to the Jury and set forth to be "one in ten, on each bet, with eighteen zeros after it which is more than one in a trillion" (243). The Judge went further in the area of probability and drew for the benefit of the Jury a parallel of a person drawing thirteen (13) cards of the same suit in a bridge game. These were all probabilities and odds given to the Jury by the Court, no where to be found in the testimony and amounted to the Court's bolstering the Prosecution's case in this regard.

In this case the entire factual situation depended upon the existence or non-existence of an error by the O. T. B. computers and the Court's comments with regard to the above were unfair in view of the evidence and highly prejudicial in that for all intents and purposes they removed the possibility of an error from the Jury's conclusion and were tantamount to a directed verdict. In Quercia v. United States, 289 U.S. 466 (1933) the Court stated at 699 "in commenting upon testimony we may not assume the role of the witness. He may analyze and dissect the evidence, but he may not either distort it or add to it". ... "The influence of the trial Judge on the Jury "is necessarily and properly of great way" "his slightest word or intimation is received with deference and may prove controlling". This Court has accordingly emphasized the duty of the trial judge to use great care that an expression of opinion upon the evidence "should be given so not to mislead and especially that it should not be one sided". "That deductions and theories not warranted by the evidence should be studiously avoided", citing Star v. Unites States, 153 U.S. 614 (626).

Hickory v. United States , 160 U.S. 408, 421-423.

In Billeci vs. United States, 87 U.S. App. DC 274 (1950), the Court stated the difference between assisting the Jury, which is a duty of the Federal judge, and encroaching upon its responsibility, which is forbidden, has been developed at great lengths many times.... When a Federal judge comments upon evidence by expressing his opinion on phases of it, he is treading close to the line which divides proper judicial action from the field which is exclusively the Jurys'.

In addition to the above, the Court refused to charge as requested that the government's failure to call the maker of the 1099 form should cast an unfavorable inference against the government relative to his testimony. (Tr. 185). The Prosecutor was in control of that witness and admitted the same (Tr. 186). However, in the Judge's charge, it was made to seem, that this witness was also available to the defense (Tr. 239-240). It is respectfully submitted that this likewise constitutes error on the Court's part.

POINT III

THE PROSECUTION DELIBERATELY DEPRIVED THE APPELLANT OF A FAIR TRIAL, IN THAT IT WILLFULLY WITHHELD THE IDENTITY OF A WITNESS IN POSSESSION OF INFORMATION FAVORABLE TO THE DEFENSE.

Appellant testified before the Grand Jury that he purchased five (5) tickets of the $72.00 box variety of which one (1) was a winner from branch 64 on March 8th. The prosecution submitted testimony by Gladys Lee. It was her testimony that despite the heavy volume of ticket purchasers appearing at her window, she was able to state that the appellant did not look like the person who purchased this series of thirty-five tickets. This is certainly not the type of identification testimony upon which appellant's presence at the O. T. B. window should be excluded. In addition, it was not established that the appellant was at that window at all.

Further testimony with regard to identification, or non-identification, was elicited from Esther Nossov, the O. T. B. cashier, who testified that she could not recall who in fact did appear at her window to cash this particular winning ticket. She could not recall the appellant at all.

Appellant's trial counsel then requested the production of a witness under the prosecutor's control, said witness being the person at the O. T. B. office, branch #106, assigned to prepare 1099 forms on winning tickets, and on this ticket number in particular. These

1099 forms, are generally prepared in the presence of the ticket holder, by the person assigned by the O. T. B. Corporation. The ticket holder being required to sign said 1099 form. One copy being retained by the O. T. B. Corporation for Internal Revenue use, and one copy given to the ticket holder. It was apparent from the outset, that the person who prepared this 1099 form was a necessary witness having knowledge material to the transaction upon which the Perjury Indictment was predicated. Since, it was the Government's contention that this particular ticket was the appellant's, because the 1099 bore the ticket number as copied by the preparer of that 1099. This witness would be in the best position to establish the fact that appellant's testimony before the Grand Jury was either truthful or untruthful.

On January 3, 1974, after a discussion with the Assistant U. S. Attorney on this case, counsel was directed to call an employee at O. T. B. headquarters and inform that she would supply counsel with the information necessary to subpoena the maker of the 1099. On January 7th, counsel communicated with O. T. B. headquarters and was advised that O. T. B. personnel has been instructed by the Prosecutor, not to divulge this information to counsel. Counsel however was assured that the maker of the 1099 would be in Court. (Tr. 101). The maker of the 1099 was never made available to counsel, thereby thwarting appellant's efforts to obtain this witness.

A further request addressed to the U. S. Attorney assigned to

the trial of this matter for the identity of the missing witness was met by confusing and conflicting replies, to the effect that said witness would be produced; that the U. S. Attorney did not know the identity of this witness, then finally at a time when appellant had been effectively foreclosed from offering the witness' testimony for consideration by the Jury, at that time the Prosecutor acknowledged that he was aware of the witness' identity and offered appellant's trial counsel that information. (Tr. 185-186).

Appellant submits that the Prosecution's tactics in deliberately withholding evidence favorable to the defense is violative of his constitutional right to a fair trial. "The Prosecution violated appellant's federal protected right to due process of law when it failed to disclose to defense counsel evidence known to the Prosecution which could be reasonably considered admissable and useful to the defense"; Giles v. Maryland, 386 U. S. 66, p. 97. It is appellant's claim that the Prosecution deliberately thwarted efforts to secure the attendance of a witness in possession of evidence favorable to him.

> "Non-disclosure-deliberate withholding of important information of the type described which is in the exclusive possession of the State is in my judgment, not reconcilable with the concept of a fair trial and with the Due Process Clause". Giles v. Maryland, Supra, p. 100, 101.

In Brady v. Maryland, 373 U. S. 83 at p. 87 the Court stated:

> "We now hold that the suppression by the

> Prosecution of evidence favorable to an accused upon request violates Due Process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the Prosecutor".

The Prosecution tactics in deliberately withholding the identity of the witness sought by appellant deprived appellant of the opportunity to prepare and present to the Jury an adequate defense that the charges leveled in the indictment, and constitutes gross misconduct which should not be condoned by the Court.

> "There is no place in our system of criminal justice for prosecutorial misconduct". Miller v. Pale, 386 U.S. 1; Napue v. Illinois, 360 U.S. 244; Alcorta v. Texas, 355 U.S. 28; Giles v. Maryland, Supra.

POINT IV

THE COURT LACKED JURISDICTION TO TRY APPELLANT IN THAT THE OFFENSE WHICH WAS THE SUBJECT OF THE GRAND JURY PROCEEDING WAS NOT AN OFFENSE WITHIN THE MEANING OF 18 U. S. C. SEC. 224

A Grand Jury has no right to conduct an investigation into an offense over which it lacks jurisdiction of the subject matter. The Grand Jury in this case was investigating violations of 18 U. S. C. Section 224 involving "bribery in sporting contests". On it's face, 18 U. S. C. Section 224 does not prohibit bribery effecting the outcome of harness races. The Statute provides a specific definition as to what is meant by sporting contests:

The Term "sporting contests" means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before it's occurrence..... 18 U. S. C. Section 224 (c) (2)".

Based on the plain words of this Statute, harness racing as well as other forms of racing, do not fall within the sporting contests covered by this Statute. In harness racing, individual contestants do not exist as the sole contestants, nor do individuals exist as teams of contestants. On the basis of it's ordinary interpretation, the language of this Statute seems to indicate an intention to make criminal the prohibited conduct applied to events such as boxing and tennis matches; football, baseball and basketball games all involving individuals, or

teams of individuals as contestants.

Certain fundamental principles guide construction of this Statute. One is that the judicial power of the federal government is limited and its courts can only exercise jurisdiction where Congress has specifically provided for it. Cary v. Curtis, 44 U.S. 236, 245 (1845). Accord, Lockerty v. Phillips, 319 U.S. 182, 187-88 (1943). The question whether Congress intended an extension of federal criminal jurisdiction into the area of harness racing is the subject of much doubt. It is not suggested nor sought here, that the Statute be construed so strictly as to defeat the intention of the legislature, but what is sought, is to have the reason and purpose of the enactment taken into consideration when construing it, because of its doubtful applicability. The Supreme Court has told us that the extension of federal criminal jurisdiction will not be presumed, but must be clearly expressed in the Statute, where an ambiguity exists as to the extent a federal statute reaches into fields normally regulated by a State, the Supreme Court has made clear that ambiguity must be resolved in favor of the most limited federal intervention. Rewis v. United States, 401 U.S. 808 (1971) citing Bell v. United States, 349 U.S. 81, 83 (1955) and United States v. Bass, 404 U.S. 336 (1971). The statute as stated before evidences no intention to encompass sporting contests between animals; it is limited to contests between "individual contestants". Not only does the general usage of the words employed exclude animals, but also the statute itself equates individuals with "persons" in sub. sections

(c) (3).

Since normal construction of the plain words of this statute do not seem to include the sport of harness racing, references to its legislative history do not seem necessary. However, it is important to note that the legislative history makes absolutely no reference to racing in general nor harness racing in particular. Rather, it appears that legislation was directed to prevent gambling interests from invading sports such as basketball, football, baseball, collegiate and professional sports. And certainly, in those areas, federal intervention seemed justified by statements as to the absence of effective State regulation of bribery in sports meant to be covered by this statute. (110 Cong. Rec. 920-923, (1964), 109 Cong. Rec. p. 20597 (1963), Senate Report No. 593, p. 3 (88th Cong. 1 Sess. 1963), Senate Report No. 2003, pp. 4, 5 (87th Cong. 2d Sess. 1962) and 108 Cong. Rec. 19174, 19175 (1962)). No one State or combination of individual States actually regulates those sports intended to be covered by this statute. There is no similar absence of state regulation to be marshalled in support of federal intervention to control racing. Horse racing is one of the most heavily regulated sports due to the State's economic interest in pari-mutuel wagering. Each and every state that allows racing has a statutory supervision for its conduct. The state polices all functions and personnel in racing. State stewarts and judges are employed at the tracks to oversee racing and the conduct of personnel. All people

involved in racing are issued licenses and are under direct supervision and control of the various racing commissions. In addition, all but three (3) of the thirty (30) states which allow horse racing have their own sports bribery statutes (New York Penal Law, Sec. 180.40, 180.50 (McKinney 1967)).

It is respectfully submitted that Congress never intended federal intervention in the field of bribery of harness races. State regulation of the possible abuses therein is adequate and extensively diligent. It is submitted that the Grand Jury therefore lacked jurisdiction over the subject matter of it's inquiry and the alleged perjury by the appellant was not even in the proper ambit of its inquiry. That the indictment was therefore with no lawful effect and conferred upon the court no jurisdiction over this appellant.

CONCLUSION

THE JUDGMENT SHOULD BE REVERSED, UPON THE LAW OR UPON THE FACTS, AND IN THE INTERESTS OF JUSTICE.

THE INDICTMENT SHOULD BE DISMISSED, OR IN THE ALTERNATIVE, A NEW TRIAL SHOULD BE ORDERED.

Respectfully Submitted,

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April, 1974

U.S. v. Pinto

STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 29 day of April, 1974 deponent served the within Brief upon Marshall Lamor Goldings

attorney(s) for appellee

in this action, at U.S. Dept. of Justice
Washington, DC. 20530

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this
29 day of April, 1974

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976